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July 6, 2004

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte
CC Docket 01-338

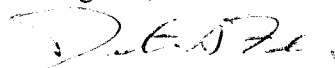
Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on July 2, 2004, the undersigned met with the following members of the Commission's Wireline Competition Bureau: Gail Cohen, Ian Dillner, Russell Hanser, Marcus Maher, Jeremy Miller and Thomas Navin.

In addition, the following individuals participated in the meeting via conference call: John Facone, Senior Director, Local Service Development, ACN Communications, Inc.; Daniel Gonos, Senior Regulatory Analyst, ACN Communications, Inc.; Richard Heatter, Vice President Legal Affairs, Mpower Communications, Inc.; James P. Prenetta, Jr., Senior Vice President, General Counsel and Corporate Secretary, CTC Communications, Corp.; and Julia Strow, Vice President, Regulatory and Industry Relations, Cbeyond Communications, LLC

We presented the views set forth in the attached document which was provided at the meeting. We also indicated that we would provide a copy of a letter filed by SBC Communications, Inc. in two proceedings before the Public Utility Commission of Texas. A copy of that letter is attached to this filing as well.

Regards,



Patrick J. Donovan
Jonathan S. Frankel
Paul B. Hudson

Marlene H. Dortch

July 6, 2004

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Enclosures

cc: John Facone
Daniel Gonos
Richard Heater
James P. Prenetta, Jr.
Julia Strow
Gail Cohen (via e-mail)
Ian Dillner (via e-mail)
Marcus Maher (via e-mail)
Russell Hanser (via e-mail)
Jeremy Miller (via e-mail)
Thomas Navin (via e-mail)

ATTACHMENTS

BOC Commitment Letters Are Inadequate

- Verizon, Qwest make no commitment for loops or transport.
- None address dark fiber.
- Year end may not be enough time to complete FCC rulemaking.
- BOCs want to amend interconnection agreements to reflect *USTA II*, impose special access pricing.
 - *E.g.*, Current Qwest proposal: Amend ICA so that CLECs “shall not order, and Qwest will not provide” DS1, DS3, or dark fiber loops and transport, DS1 EELs, switching.

Interim Stability Plan

- Loop rules were at most remanded, not vacated.
- Preserve BOC obligations as reflected in ICAs pre-*USTA II*.
- TELRIC
- Streamline/accelerate new rulemaking:
 - Rely to the extent possible on previous record.
 - Limit review to *USTA II* issues.

FCC Has Authority to Adopt Interim Relief

- Loop rules were at most remanded, not vacated.
- May adopt emergency requirements without notice and comment for good cause. USC Section 553(b)3)(B). Avoidance of market disruption pending further reforms is justification for temporary requirements. *CompTel v. FCC*, 309 F.3d 8, 14 (2002).
- May rely on previous record. *Mobil Oil Corporation v. EPA*, 35 F.3d 579, (D.C. Cir. 1994)
- Section 201: TRO Line Sharing; SBC 12/19/02 *Ex Parte*.
- Section 271: Checklist items must continue to be provided even if not within 251 UNE obligations. *Texas 271 Order*, 15 FCC Rcd, Para. 348 (2000).
 - May rely on TELRIC pricing since 271 pricing not set.



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July 1, 2004

The Honorable Diane Parker
The Honorable Tammy Cooper
The Honorable Andrew Kang
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas 78701

Re: Docket No. 28821: *Arbitration of Non-cost Issues for Successor Interconnection Agreements to the Texas 271 Agreement*

Docket No. 29824: *Joint CLECs' Petition For Post-Interconnection Dispute Resolution And Request For Interim Ruling Regarding SBC Texas' Assertion of Authority to Discontinue Providing Unbundled Network Elements Under the T2A and T2A-based Agreements*

Dear Judges Parker, Cooper and Kang:

As its response to Order No. 3 in Docket No. 29824 and Order No. 18 in Docket No. 28821, AT&T filed a letter from Mr. James Cicconi, General Counsel and Executive Vice President for AT&T to Mr. James Ellis, Senior Executive Vice President and General Counsel for SBC. Enclosed is a response letter from Mr. Ellis to Mr. Cicconi.

Sincerely,

Emily S. Barbour
Senior Counsel

cc: All Parties of Record



James D. Ellis
Senior Executive Vice President
and General Counsel

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July 1, 2004

Mr. James Cicconi
General Counsel & EVP
Law and Government Affairs
AT&T Corporation
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036

Dear Jim:

Your June 29, 2004 letter appears to indicate that AT&T has no real interest in commercial negotiations. Nothing better illustrates AT&T's approach to this entire matter than the fact that, on the very same day that you sent me your letter and before I even had an opportunity to respond, AT&T sent it to the Public Utility Commission of Texas and asked the commission to order SBC to provide a response to it. Is this really how you want to do business? Given how you have handled this, it doesn't appear that you are really interested in a personal response from me, let alone a business-to-business solution; but, nevertheless, I will answer your questions.

As you know, the proper rules governing unbundling have been the subject of extended litigation for the past eight years. The FCC's unbundling regime has been vacated by the courts, in whole or in part, on three separate occasions.

Throughout this period, AT&T and other CLECs have been able to take advantage of the FCC's unlawful unbundling rules to use SBC's facilities, including the UNE-P, at steeply discounted rates that are well below our actual costs. We have lost millions of customers and hundreds of millions of dollars to this unlawful regime, which has no basis in the 1996 Act or sound economics. The industry as a whole has simultaneously suffered from the lack of investment incentives created by wholly synthetic competition.

Your complaints about uncertainty and potential marketplace disruption due to the most recent vacatur are not credible. You knew that the FCC's latest unbundling rules were subject to substantial legal risk, and you chose as a business strategy to press your advantage under those rules as aggressively and for as long as you could. The rules have now finally and properly been vacated. As a result, you are left with the alternatives intended by Congress: you can build and rely solely on your own facilities, you can use your own facilities in combination with SBC's unbundled voice grade loops,

you can rely on the resale provisions of the Act, or you can seek to enter into reasonable commercial arrangements outside the purview of regulation

In his June 9 letter to Chairman Powell, Mr. Whitacre stressed SBC's commitment to work with our wholesale customers to arrive at economically sustainable commercial wholesale agreements that meet everyone's business needs. We have been meeting freely and in a spirit of cooperation with other wholesale customers, and we have made substantial progress -- including a far-reaching agreement with Sage Telecommunications, our third largest wholesale customer. As Mr. Whitacre communicated to your Chairman and CEO, David Dorman, immediately upon issuance of the D.C. Circuit's decision, we welcome the opportunity to negotiate a private commercial arrangement with AT&T as well.

In order to ensure stability and continuity during the transition to a market-based approach, Mr. Whitacre made certain voluntary commitments in his letter designed to facilitate commercial negotiations through the end of the year. SBC's commitments will also provide regulators with the time they need to pass lawful unbundling rules, rules that comply with the 1996 Act, with prior court rulings, and with today's marketplace realities. But we should all recognize that further regulation is not the answer for our industry. Pervasive regulation will simply create more uncertainty and more litigation. The industry is changing too fast -- particularly with the advent of VOIP and the explosion of wireless technologies -- to be held hostage to regulatory regimes that are necessarily obsolete even before they are adopted. We all need an environment of minimal regulation in which investment and business decisions can be made free of the threat of regulatory arbitrage.

It is for that reason that commercial negotiations, firmly grounded in the realities of today's marketplace, will provide the most stability for the industry and the firmest foundation for investment and consumer welfare.

SBC's commitments, as articulated in Mr. Whitacre's letter, are what they are, and we will honor them. But, we will not go beyond them. In answer to your specific questions:

1. SBC's commitment does not apply beyond the expiration date of existing interconnection agreements. However, as you know, many interconnection agreements provide that they remain in effect until replaced by a new agreement. We expect new agreements to be based on current law.
2. As you may be aware, there are no valid federal rules mandating unbundling for any switching at all. To provide certainty and stability, we voluntarily offered to continue to provide unbundled switching as part of the UNE-P to customers served by 1-3 lines, but our commitment goes no further.
3. For those UNEs that are subject to the rate stability commitment and that are covered by existing, effective agreements, our commitment means there will be no rate increases this year unless and until either the CLEC has agreed to an

increase, or a regulatory commission or court has approved a change in the rates for those UNEs.

4. SBC's commitment is to not *unilaterally* increase the state-approved prices for those UNEs that are the subject of our commitment. As noted above, this means that if a CLEC, regulatory commission, or court approves a change in the rates for those UNEs, including a true-up, SBC would be free to increase those rates. Consistent with Mr. Whitacre's commitment, this would not constitute a unilateral increase.
5. SBC's commitment is to continue to provide the specified UNEs until the end of the year, and includes an ability to place new orders for these UNEs. SBC's commitment does not extend to EELs.
6. SBC's commitment does not include dark fiber; and SBC never said that it did.
7. Except as stated in our letter in respect to those UNEs covered by SBC's commitment, SBC reserves its contractual and legal rights to take all steps necessary to secure the benefits of the *USTA I*, TRO, and *USTA II* decisions.
8. SBC has already committed to adhere to applicable change of law provisions in its existing, effective interconnection agreements and is doing so today. At the same time, SBC has reserved all its rights under *USTA II*, including any rights stemming from the federal courts' determination that the FCC's unbundling rules were never lawful. It would be premature at this point to say anything about what we'll be doing come next January.

In the final analysis, rather than continue in an exchange of letters and legal positions, we again invite AT&T to sit down with us to negotiate a private, commercial agreement that will meet your business needs.

Sincerely yours,



cc: The Honorable Michael K. Powell
The Honorable Michael D. Gallagher
The Honorable Paul Hudson
The Honorable Julie Parsley
The Honorable Barry Smitherman